

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALAN BACA, *et al*,

Plaintiffs,

v.

CIV. No. 14-cv-1051 KG/SCY

EASY ICE, LLC, *et al*,

Defendants.

ORDER

THIS MATTER comes before the Court on Defendant Reddy Ice's Motion to Compel (*doc. 25*). Having reviewed the Motion and the accompanying briefs the Court finds the Motion well taken and will **GRANT** it.

Defendant's Motion to Compel asserts that Plaintiffs have failed to respond either its First Set of Interrogatories or its First Set of Request for Production, both propounded on February 3, 2015. *Docs. 20, 25*. In response, Plaintiffs' counsel does not deny that he has failed to respond, nor that Defendant attempted to meet and confer in good faith regarding the responses prior to filing the motion to compel. *Doc. 29*. Instead, Plaintiffs' counsel shoulders the blame for noncompliance himself, points to a variety of excuses as to why the responses were not timely provided and states that "counsel for BACA can and will now redouble efforts in this instant litigation for greater compliance and timeliness." *Doc. 29*. Plaintiffs' counsel further requests that the Court not sanction him for his untimeliness. *Id.*

Under Federal Rule of Civil Procedure 37, if a party does not respond to an interrogatory or to a request for production, the party requesting the discovery may move the Court to compel the opposing party to respond. *See Fed.R.Civ.P. 37(a)(2)(B)*. Here, there is no dispute that

Plaintiffs' counsel has failed to comply with the Federal Rules of Civil Procedure, and so the Court will grant Defendant's Motion.

Upon resolution of motions to compel or for protective orders, the "losing" party must be required to pay the reasonable expenses incurred in making or opposing the motion. *See* FED. R. CIV. P. 26(c)(3); FED. R. CIV. P. 37(a)(5). However, this payment shall not be required if (i) the prevailing party failed to make a good faith effort to obtain the disclosure without court action; (ii) the "losing" party's grounds were "substantially justified" or (iii) the "circumstances make an award of expenses unjust." *Id.* Further, before such costs are awarded, the Court must give the losing party an opportunity to be heard on the matter. FED. R. CIV. P. 37(a)(5). The Court therefore orders Plaintiffs' counsel, within seven (7) days of the entry of this order, to file a brief no longer than five (5) pages with the Court stating why sanctions should not be awarded against him.

IT IS THEREFORE ORDERED THAT:

1. Defendant Reddy Ice's Motion to Compel is GRANTED.
2. Plaintiffs' counsel will, within seven (7) days of the entry of this order, file a brief no longer than five (5) pages with this Court explaining why he should not be sanctioned under Federal Rule of Civil Procedure 37(a)(5).

A handwritten signature in blue ink, reading "Steve Yankovich". The signature is written in a cursive, flowing style with a long, sweeping tail.